

AMENDMENTS TO THE DRAWINGS

Replacement Figures 15, 16 and 17 are now provided.

REMARKS

Unless otherwise noted, the claims have been cancelled or amended to further Applicant's business interests and the prosecution of the present application in a manner consistent with the PTO's Patent Business Goals (PBG; 65 Fed. Reg. 54603 (September 8, 2000)), and not in acquiescence to the Examiner's arguments and while reserving the right to prosecute the original (or similar) claims in the future. None of the claim amendments made herein are intended to narrow the scope of any of the amended claims within the meaning of *Festo Corp. v. Shokestu Kinzoku Kogyo Kabushiki Co.*, 234 F.3d 558, 56 USPQ2d 1865 (Fed. Cir. 2000) or related cases.

In the Final Office Action dated 9/13/05, the Examiner indicated that amendments to pages 68 and 74 of the specification introduced incorrect sequence identifiers (Office Action, pg. 2). The Applicants have amended the specification as suggested by the Examiner. As such, the Applicants respectfully request that the objection be withdrawn.

The Examiner has objected to the brief descriptions of Figures 18 and 19 for not identifying multiple view (Office Action, pg. 3). The Applicants have amended the brief descriptions of the Figures to include reference to Figures 18A and 18B and Figures 19A, 19B, and 19C. As such, the Applicants respectfully request that the objection be withdrawn.

The Examiner has further objected to substitute Figures 15-17 as reciting incorrect sequence identifiers (Office Action, pg. 3). The Applicants submit herewith a second set of substitute Figures 15, 16, and 17 with the correct sequence identifiers. As such, the Applicants respectfully request that the objection be withdrawn.

In the Final Office Action dated 9/13/05, the Examiner issued two rejections under 35 U.S.C 112, first paragraph. Each of the rejections is discussed in detail below.

I. The Claims are Supported by Proper Written Description

Claims 17, 18, 20 and 22-36 are rejected under 35 U.S.C. §112, first paragraph as failing to comply with the written description requirement (Office Action, pg. 4). In particular, the Examiner states "However, the specification does not describe the nucleotide sequence of seed-specific promoters that differ in as much as 20% in sequence identity from SEQ ID NO: 1 ." Office Action, pg. 5. The Applicants respectfully disagree with the rejection. Nonetheless, in order to further the business interests of the

Applicants and while reserving the right to prosecute the original (or similar) claims in the future, the Applicants have amended Claims 17, 18 and 20 to refer to promoter sequences that are at least 95% identical to SEQ ID NO: 1 as suggested by the Examiner (Office Action, pg.7).

The Examiner further states that the phrase "wherein expression from said seed specific promoter is at least two times greater in seeds than in tissues selected from the group consisting of roots, floral tissue, vascular tissue and maturing leaf tissue" is new matter (Office Action, pgs. 5-6). The Applicants respectfully disagree with the rejection. Nonetheless, in order to further the business interests of the Applicants and while reserving the right to prosecute the original (or similar) claims in the future, the Applicants have amended Claims 17, 18 and 20 to replace the phrase "tissues selected from the group consisting of..." with "non-seed tissues" as suggested by the Examiner (Office Action, pg. 7).

The Applicants respectfully submit that the presently claimed invention is supported by an adequate written description. As such, the Applicants respectfully request that the Examiner reconsider and withdraw the rejection of the claims.

II. The Claims are Enabled

The Examiner rejects Claims 17, 18, 20, and 22-26 under 35 U.S.C. § 112, first paragraph as allegedly not being enabled by the Specification (Office Action, pg. 6). In particular, the Examiner states that the specification "does not reasonably provide enablement for variants thereof that are at least 80% identical to SEQ ID NO: 1 that retain promoter activity." (Office Action, pg. 6). The Applicants respectfully disagree. As described above, the Applicants have amended Claims 17, 18 and 20 per the Examiner's suggestion to encompass sequences that are at least 95% identical to SEQ ID NO: 1. The Applicants submit that given the high level of skill in the art, extensive guidance in the specification, methods known in the art, that the production of and isolation of the claimed nucleic acid sequences which are at least 95% identical to SEQ ID NO: 1 while retaining seed-specific promoter activity does not require undue experimentation. Thus, Applicants respectfully submit that the Claims are enabled and request that the rejection be withdrawn.

CONCLUSION

All grounds of rejection of the Final Office Action of September 13, 2005 have been addressed and reconsideration of the application is respectfully requested. It is respectfully submitted that Applicant's new claims should be passed into allowance. Should the Examiner believe that a telephone interview would aid in the prosecution of this application Applicant encourages the Examiner to call the undersigned collect at (608) 218-6900.

Dated: _____

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